

Sutton Mgt. Co. v Alsaedi
2026 NY Slip Op 31917(U)
May 4, 2026
Supreme Court, New York County
Docket Number: Index No. 653681/2025
Judge: Emily Morales-Minerva
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42M

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SUTTON MANAGEMENT CO.,

Plaintiff,

- v -

SHARIFF ALSAEDI, HILLS SHOPPE, INC.

Defendant.

INDEX NO. 653681/2025

MOTION DATE 09/26/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10
were read on this motion to/for JUDGMENT - DEFAULT.

APPEARANCES:

Wrobel Markham LLP, New York, NY (Steven I. Fox, Esq. of
counsel), for plaintiff.

EMILY MORALES-MINERVA, J.S.C.

In this commercial landlord-tenant action, plaintiff SUTTON
MANAGEMENT CO. (landlord) moves, pursuant to CPLR § 3215, for
the entry of a default judgment for unpaid rent against
defendant HILLS SHOPPE, INC. (tenant) and defendant OMAR ALSAEDI
(guarantor) in the amount of \$48,770.93.

Defendants do not appear or submit opposition to the motion
(sequence number 01).

When a defendant fails "to appear, plead or proceed to
trial of an action reached and called for trial, or when the
court orders a dismissal for any other neglect to proceed, the

plaintiff may seek a default judgment against [the defendant]" (CPLR § 3215 [a]). To establish entitlement to a default judgment, plaintiff must file (1) proof it served defendant with the summons and complaint, and (2) "proof of the facts constituting the claim, the default, and the amount due . . . by affidavit made by the party" (CPLR § 3215 [f]; see also Woodson v Mendon Leasing Corp., 100 NY2d 62, 70 [2003] [providing that "an applicant for a default judgment [must] file 'proof by affidavit made by the party of the facts constituting the claim'"]; 231st Riverdale LLC v 7 Star Home Furniture Inc., 198 AD3d 524, 525 [1st Dept 2021]; Feffer v Malpeso, 210 AD2d 60 [1st Dept 1994]).

Further, the Federal Servicemembers Civil Relief Act and New York State Soldiers' and Sailor's Civil Relief Act requires a party seeking a default judgment against an individual defendant to submit proof that said defendant was not in military service at the time of the default (see 50 USC § 3931 [b] [1] [emphasis added]; see also Military Law § 309 [1]).

"A proper affidavit of nonmilitary service should include the date and location of the investigation and the facts gleaned from the investigation" (Benabi Realty Mgt. Co. v Van Doorne, 190 Misc2d 37, 38 [Sup Ct NY Cnty 2001]). Documentation provided directly from the Department of Defense Manpower Data Center -- "the official source of data on eligibility for

military" -- is sufficient to enable the court to conclude that a respondent is not currently on active military duty, or was at the time of the default (363 Assoc. v Sharhan, 2 Misc3d 928, 930 [Civ Ct NY Cnty 2003]).

Here, plaintiff fails to submit an affidavit of non-military service for defendant guarantor. The process server's inquiry of defendant guarantor's father, Faisal Alsaedi, as to defendant's military status at the time of service of process does not constitute an investigation into defendant's military status at the time of default (see MB v Precise Mgt., Inc., 2018 WL 2415953, *1 [Sup Ct NY Cnty 2018] [holding that "a default judgment motion must be accompanied by an investigation into the military status of the defendant and an affidavit detailing the investigation, which cannot be cursory"], citing Unitrin Advantage Ins. Co. v 21st Century Pharm., 158 AD3d 450, 451 [1st Dept 2018]; see also Nedeltcheva v MTE Transp. Corp., 2016 WL 4256556, *1 [Sup Ct NY Cnty 2016], affd sub nom. Nedeltcheva v MTE Transportation Corp. 157 AD3d 423 [1st Dept 2018]).

Further, plaintiff fails to submit the lease agreement, surrender agreement, or the guaranty. Therefore, the motion is also denied inasmuch as plaintiff's proof does not establish a prima facie case as to any of the causes of action alleged in the complaint.

Accordingly, it is hereby

ORDERED that plaintiff's motion (seq. no. 001), pursuant to CPLR § 3215, for a default judgment, is dismissed without prejudice; it is further

ORDERED that, within fifteen days from the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, upon defendants; it is further

ORDERED that plaintiff shall bring a renewed default judgment motion within 90 days from the date of this decision and order; and it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

5/4/2026
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE